

REMARKS/ARGUMENTS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-33, drawn to a composition comprising water containing quaternary ammonium groups of the formulas (I) and (III); and

Group II: Claims 1, 2 and 6-33, drawn to a composition water containing quaternary ammonium groups of the formulas (II) and (IV); and

Group III: Claims 34-36, drawn to methods of conditioning keratinous materials.

Applicants have elected Group I: Claims 1-33, drawn to a composition, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reasons and/or examples to support any conclusion that restriction is proper.

The Examiner has categorized the relationship between Groups I and II as distinct inventions, i.e. unrelated. Inventions are distinct if (A) the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; (B) the invention as claimed are not obvious variants; **and** (C) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. (M.P.E.P § 806.04(j)). (Emphasis added). The Examiner asserts that the silicone polymers of Group I have a different structure from the silicone polymers of Group II, the silicone polymers are not obvious variants, and a search of Group I would not encompass the silicone polymers of Group II.

However, the Examiner has not shown that the silicone polymers as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. Applicants direct the Examiner's attention to the present specification, e.g., the Summary of the Invention at page 1, which clearly indicates that the polymers are capable of use together and have the same function or effect.

The Examiner has categorized the relationships between Groups I-II and III as product and process of use. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process of using the product as claimed can be practiced with another materially different product or (B) that the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). The Examiner asserts, *inter alia*, that the methods of "washing hair" and "making it shiny and supple can be done with ordinary soap."

However, Applicants point out, that the present claims and invention do not relate to washing hair. Moreover, as conventionally known, the structure, function, and application of "ordinary soap" is different than a "non-washing composition" or "conditioner". As such, there would be no expectation whatsoever that the claimed methods would be useful or even practical in the manner asserted by the Examiner.

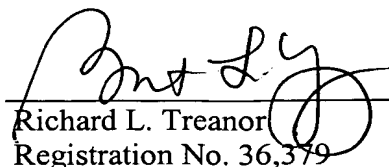
Accordingly, for at least the reasons presented above, Applicants submit that the Examiner has failed to meet the burden necessary to sustain the restriction requirement. Withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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